IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2273 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AHMEDABAD NEW COTTON MILLS CO.LTD., & 1 - Petitioner(s)
Versus
SALES TAX OFFICER & 3 - Respondent(s)

==========

Appearance :

MR BH CHHATRAPATI for Petitioner(s) : 1 - 2.
MS KRINA CALLA, AGP for Respondent(s) : 1 - 3.
NOTICE SERVED for Respondent(s) : 4,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/08/2007

ORAL JUDGMENT

In the present petition, the petitioner has challenged the coercive action initiated by the respondents for recovery of alleged sales tax dues of

the petitioner for the years 1987 to 1989-90 and 1994-95.

2. During the pendency of the petition, several development took place. To bring these developments on record, the petitioner has filed a further affidavit dated 6th October, 2005. In the said affidavit, it is stated *inter alia*

> "4. Liability of the Petitioner towards Sales Tax dues for the year 1987 was ascertained in the Assessment Order issued under the Act by the Respondent No.1, and in the said Assessment order, an amount of Rs.9,853.69/- was shown as refund to the Petitioner. The Respondent No.1, vide its letter dated 30.12.1991, sent a refund payment Order for an amount of Rs.9,853.69/- to the Petitioner. A copy of the Assessment Order for the year 1987 and letter dated 30.12.1991, is annexed herewith and marked as **Annexure B Collectively**.
>
> 5. I state that in the Assessment Order issued under the Act by the Respondent No.1 for the period of 1.1.1988 to 31.3.1989, an amount of Rs.10,26,366/- was shown as payable by the Petitioner towards Sales Tax dues for the said period. I state that in

the assessment order for the period of 1989-1990, an amount of Rs.8,63,084/- was determined as payable by the Petitioner towards Sales Tax dues for the said period. A copy of the Assessment Orders for the year 1988-89 and 1989-90 is annexed herewith and marked as **Annexure C Collectively**.

6. I state that the aforesaid Assessment Orders came to challenge before the Gujarat Sales Tax Tribunal at Ahmedabad and the Authority was pleased to quash and set aside the said Assessment Orders for the year 1988-89 and 1989-90 vide its common Order dated 20.6.2002 passed in Second Appeal Nos. 587 and 588 of 2002. A copy of the said Order dated 20.6.2002 is annexed hereto and marked as **Annexure D**.

7. The Petitioner states that by way of impugned notice, the Petitioner was called upon to make payment for the years 1987 to 1989-90. The Petitioner states that, as in the Assessment Order for the year 1987 an amount of Rs.9,853.69/- was shown as refund to the Petitioner and Assessment Orders for the year 1988-89 and 1989-90 have been quashed and set aside, the Petitioner is

not liable to make payment as per the impugned notice 26.2.1997 for the years 1987 to 1989-90.

8. As per the Assessment Order made under the Act for the year 1994-95, the Petitioner was required to pay Rs.15,80,216/- towards Sales Tax dues. Out of that, the Petitioner had paid amount of Rs.12,24,858/-, whereas, rebate for an amount of Rs.3,55,359/- had been given to the Petitioner under the provisions of the Amnesty Scheme. Therefore, I state that the Petitioner had also made full payment, as required under the Assessment Order for the year 1994-95. A copy of the Assessment Order and copy of receipts for the amount paid by the Petitioner are annexed herewith and marked as **Annexure E Collectively**."

3. On the basis of the said averments, it is contended on behalf of the petitioner that in any case, now no amount towards sales tax is due and payable by the petitioner to the respondents. It is contended that the petitioner succeeded before the Sales Tax Tribunal in having the sales tax adjudication quashed.

4. Learned AGP Ms. Calla, however, submitted that these details are subject to verification by the

State.

5. The petitioner has stated on affidavit that subsequent to filing of the petition, on account of orders passed by the Tribunal, no sales tax dues are payable by the petitioner. This affidavit was filed on 6th October, 2005. SO far, no rebuttal affidavit is filed by the State. I, therefore, have no reason to disbelieve the statement made by the petitioner on oath. In that view of the matter, on account of subsequent developments, the recovery initiated by the State, which is impugned in the present petition, cannot be permitted to be effected. However, by way of abundant caution, it is held that it will be open for the respondents to verify the factual aspects and if only it is found that any amount which is subject matter of the present petition is not yet paid towards sales tax dues, initiate recovery thereof in accordance with law after issuing show-cause notice to the petitioner in this regard.

6. Subject to the above observations, the petition is allowed. Rule made absolute.

(Akil Kureshi, J.)

hki